

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



October 22, 1992

ALL-COUNTY LETTER NO. 92-94

TO: ALL COUNTY WELFARE DIRECTORS
ALL PUBLIC AND PRIVATE ADOPTION
AGENCIES
ALL SDSS ADOPTIONS DISTRICT OFFICES

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More Counties
- ☒ Initiated by SDSS

SUBJECT: ADOPTIONS INVOLVING UNDOCUMENTED/ILLEGAL ALIENS

This letter SUPERSEDES ACL 92-30 (dated March 10, 1992) "Adoptions Involving Undocumented Aliens," which should be discarded.

The Department has received several inquiries regarding proposed adoptions involving undocumented/illegal aliens. Specific concerns focus on the effects of an individual's undocumented/illegal alien status on the adoption process and the termination of parental rights. For the purposes of this letter, "undocumented alien" means a foreign-born individual whose entry into the United States was not under California's Intercountry Adoptions Program and the I-600 (Petition to Classify Orphan as an Immediate Relative) process and (1) entered the United States under a visa (medical, student, etc.) which has expired or (2) entered the United States from a country where documentation to enter is not required; e.g., Canada. "Illegal alien" means a foreign-born individual who has entered the United States without inspection.

The Adoptions Branch has summarized these questions and provides the following guidelines:

1. What is the obligation of a licensed adoption agency or Adoptions Branch District Office to report to the United States Immigration and Naturalization Service (INS) the undocumented/illegal alien status of any person who is a party to an adoption including the child?

Under Sections 35045(a) and 89182(c) of Title 22 Code of California Regulations (CCR), all information in adoption case records is confidential, and the records are available only to authorized adoption personnel. The Department is unaware of any statutory authority imposing on adoption agencies and their personnel a general affirmative duty, in the sense of a

legally enforceable obligation, to report to the INS knowledge about an undocumented/illegal alien. In the absence of that legal duty, information received as part of the adoption process cannot be disclosed by the licensed adoption agency or Adoptions Branch District Office to the INS.

2. May undocumented/illegal aliens adopt a child (either a United States citizen or an undocumented/illegal alien) in California? May United States residents adopt an undocumented/illegal alien?

The Department's policy is that until the alien status of the undocumented/illegal individual(s) is resolved with the INS, all adoption proceedings should be suspended pending resolution. This suspension is to ensure that the child's best interests are protected by providing a stable home environment without potential deportation of one or more family members. As soon as the licensed adoption agency or Adoptions Branch District Office discovers there is an issue regarding the alien status of any party to the adoption including the child, it should proceed as follows:

In the Independent Adoptions Program: The licensed public adoption agency or Adoptions Branch District Office should document the details in the adoption case record and notify the birth parent(s) and prospective adoptive parents in writing of the situation. Pursuant to Civil Code (CC) Section 224.42, the licensed adoption agency or Adoptions Branch District Office should prepare a preliminary report to the court based on the Department's policy that until the alien status of the undocumented/illegal individual(s) is resolved with the INS, the adoption process should be suspended in order to protect the best interests of the child. The preliminary report should also explain the circumstances of the case emphasizing whether the individual is an undocumented alien or an illegal alien and ask for the court's direction. The licensed adoption agency or Adoptions Branch District Office should then follow the court's instructions.

The licensed public adoption agency or the Adoptions Branch District Office should note that the suspension of the investigation DOES NOT include suspension of the agency's responsibility to insure that the child is safe in the home of the petitioners pending direction from the court. Specifically, caseworkers should process the petitioners' fingerprints, access the child abuse index and visit the petitioners' home as required by regulation at Title 22 CCR Sections 35083(a)(1) and 35083(a)(5), which provide:

- "(1) The agency shall conduct at least one interview in the home of the petitioners as soon as possible and no later than thirty days after the receipt of an endorsed copy of the adoption petition."
- "(5) The agency shall make another contact with the petitioners if the court report is submitted more than three months after the last contact with the petitioners."

In the Agency (Relinquishment) Adoptions Program: If the information about undocumented/illegal alien status comes to light during the home study, the licensed adoption agency or Adoptions Branch District Office should document the details in the adoption case record. The licensed adoption agency or Adoptions Branch District Office should notify the applicants in writing that the home study process has been suspended due to a question regarding the alien status of a party to the adoption including the child and that the home study process cannot proceed until this issue has been resolved with the INS.

If the information comes to light after the child has been placed with the prospective adoptive parents but before the filing of the adoption petition, the licensed adoption agency or Adoptions Branch District Office should document the details in the adoption case record. The licensed adoption agency or Adoptions Branch District Office should notify the prospective adoptive parents in writing that the adoptions process has been suspended due to a question regarding the alien status of a party to the adoption including the child and the adoptions process cannot continue until this question has been resolved with the INS. After considering the safety and best interests of the child, the agency will have to determine whether the child should remain in the placement pending resolution of the alien status.

In the unlikely event that the information comes to light after the adoption petition has been filed, the licensed adoption agency or Adoptions Branch District Office should document the details in the adoption case record and notify the prospective adoptive parents in writing of the situation. Pursuant to CC Section 222.75, the licensed adoption agency or Adoptions Branch District Office should prepare a preliminary report to the court based on the Department's policy that until the alien status of the undocumented/illegal individual(s) is resolved with the INS, the adoption process should be suspended in order to protect the best interests of the child. The preliminary report should also explain the circumstances of the case emphasizing whether the individual is an undocumented alien or an illegal alien and ask for the court's direction. The licensed adoption agency or Adoptions Branch District Office should then follow the court's instructions.

3. How does a licensed adoption agency or Adoptions Branch District Office terminate the parental rights of a parent who is a foreign national residing outside the United States? How is the legally required notice to that parent provided?

The requirements for terminating parental rights and for providing the requisite notice are stated in regulation at Title 22 CCR Section 35029 et seq. While it is legally permissible to give notice only to the presumed father or alleged natural father whose address is known, it is incumbent upon the licensed adoption agency or Adoptions Branch District Office to make all reasonable efforts to actually locate him and obtain his relinquishment, consent, denial, or waiver to the adoption. When the

address of the presumed father or alleged natural father remains unknown after all reasonable efforts to locate him have been made, the Department recommends providing notice by publication. Residency in a foreign country by the presumed father or alleged natural father does not preclude him from receiving due process as specified in California law.

In the Independent Adoptions Program, parental rights are terminated by signing a consent to the adoption or:

- A. In the case of presumed fathers, according to procedures described in CC Section 221.20 or 232. (See Title 22 CCR Sections 35029(c) and (d).)
- B. In the case of alleged natural fathers, according to procedures described in CC Section 7017. (See Title 22 CCR Section 35029(e).)

In the Agency (Relinquishment) Adoptions Program, parental rights are terminated by signing a relinquishment or:

- A. In the case of presumed fathers, according to procedures described in Welfare and Institutions (W&I) Code Section 366.26, or CC Section 221.20, 232 or 7017. (See Title 22 CCR Section 35031(c).)
- B. In the case of alleged natural fathers, according to procedures described in CC Section 7017. (See Title 22 CCR Section 35031(f).)

- 4. How does a licensed adoption agency or Adoptions Branch District Office obtain a signed relinquishment or consent from a parent who is a foreign national residing outside the United States?

When the signature of a foreign national residing outside the United States is needed on a relinquishment or consent to adoption, the licensed adoption agency or Adoptions Branch District Office should follow the requirements of CC Section 1183 regarding proof or acknowledgment of documents signed outside the United States. CC Section 1183 reads as follows:

"The proof or acknowledgment of an instrument may be made without the United States, before any of the following:


- (a) A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made.
- (b) A consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made.
- (c) A judge of a court of record of the country where the proof or acknowledgment is made.

- (d) Commissioners appointed by the Governor or Secretary of State for that purpose.
- (e) A notary public.

If the proof or acknowledgment is made before a notary public, the signature of the notary public shall be proved or acknowledged (1) before a judge of a court of record of the country where the proof or acknowledgment is made, or (2) by any American diplomatic officer, consul general, consul, vice consul, or consular agent, or (3) by an apostille (certification) affixed to the instrument pursuant to the terms of The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents."

Licensed adoption agencies and the Adoptions Branch District Offices should be aware that there are many new countries currently emerging in Eastern Europe and the former Soviet Union. Many questions may arise regarding the resident status of individuals from these new nations. The only entity in a position to provide up-to-date information on this subject is the United States Department of State.

If you have any questions on these issues, please address them in writing to the Adoptions Policy Bureau.



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cc: CWDA